

**RESOLUTION NO. 74341**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE CONTRACT CHANGE ORDER NO. 65 WITH ARNTZ BUILDERS, TO RESOLVE ALL CONSTRUCTION CLAIMS RELATED TO THE CAMDEN MULTI-SERVICE COMMUNITY CENTER PROJECT FOR A TOTAL CONSTRUCTION CONTRACT AMOUNT OF \$7,747,711.28**

**WHEREAS**, the Camden Multi-Service Community Center project ("Project") was completed approximately ten (10) months after the completion date required by the construction contract; and

**WHEREAS**, the contractor, Arntz Builders, submitted a claim requesting approximately \$1.4 million in additional compensation for additional work and schedule delays, allegedly attributable to the City; and

**WHEREAS**, the City countered with a claim for liquidated damages of \$873,000 based on the delay in completing the Project; and

**WHEREAS**, as a result of its liquidated damage claim, the City withheld payment of compensation to Arntz Builders for change order nos. 49 through 64; and

**WHEREAS**, as a result of its liquidated damage claim, the City also did not release certain retention held in escrow; and

**WHEREAS**, the City and Arntz Builders agreed to retain an independent third party to provide a neutral evaluation of the respective claims; and

**WHEREAS**, as a result of the neutral evaluation process and mediation, the City agreed to pay Arntz Builders additional compensation in the amount of \$425,000 as part of a final settlement of all claims.

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

The City Manager is hereby authorized to negotiate and execute with Arntz Builders Contract Change Order No. 65 as a full and final settlement of all construction claims on the Project under the following terms and conditions:

- The City will pay to Arntz Builders an additional \$425,000 in compensation related to the delay claims raised by Arntz.
- The City will pay to Arntz Builders \$540,093.50 as full payment for outstanding Change Order Nos. 49 through 64.
- The City will release of \$671,144.47 in retention that has been held in escrow.
- The City will continue to withhold moneys for outstanding stop notices until the City receives the appropriate stop notice release or a stop notice release bond.
- The revised total construction contract amount based on Change Order No. 65 shall not exceed \$7,747,711.28.

- The appropriate releases of liability from both parties will be included.

ADOPTED this 6<sup>TH</sup> day of MAY, 2008, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, CORTESE,  
LICCARDO, NGUYEN, OLIVERIO, PYLE, WILLIAMS;  
REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk